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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JKB HOMES NORCAL, INC.,

Plaintiff and Appellant,

v.

CITY OF OAKDALE,

Defendant and Respondent.

F068893

(Super. Ct. No. 667971)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Roger M. Beauchesne, Judge.

Michael S. Warda for Plaintiff and Appellant.

William H. Parish and Kyle A. Hampton for Defendant and Respondent.

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Appellant JKB Homes Norcal, Inc. (JKB) challenges the judgment entered against it on its breach of contract action. According to JKB, its interest in the written agreement at issue was not transferred along with the other collateral following a foreclosure sale because there is no reference to personal property in the trustees' deeds upon sale. JKB argues the trial court incorrectly relied on a bill of sale as the instrument that transferred JKB's interest in the agreement.

Contrary to JKB's position, its interest in the agreement was transferred. A trustee's sale is complete upon acceptance of the final bid. Absent defects in the foreclosure procedure, the trustee's deed following a foreclosure sale is merely a ministerial act. Further, a bill of sale is an appropriate instrument to transfer personal property. Accordingly, we affirm the judgment.

BACKGROUND

JKB is a residential developer. JKB secured funding from Guaranty Bank to build several subdivisions and executed two deeds of trust to secure repayment.

JKB and respondent City of Oakdale (City) entered into an agreement that required the City to reimburse JKB for certain road improvements constructed by JKB. JKB was to receive payment in the form of credits against building permits. This reimbursement agreement was included as part of the collateral securing JKB's loans from Guaranty Bank. JKB defaulted on these loans and Guaranty Bank initiated foreclosure proceedings.

The notices of the foreclosure sales included the reimbursement agreement as part of the personal property collateral. Each foreclosure sale went forward with the beneficiary, Guaranty Bank, making the successful bids. The sales were followed by execution of trustees' deeds upon sale for the real property and bills of sale for the personal property. Thereafter, Beck Development purchased the real and personal property from Guaranty Bank.

JKB filed the underlying complaint for breach of contract against the City. JKB alleged that the City breached the reimbursement agreement and owed JKB approximately \$367,000. According to JKB, the reimbursement agreement was not transferred as part of the foreclosure.

Following a bench trial, the trial court found in favor of the City.

DISCUSSION

Civil Code sections 2924 through 2924k govern nonjudicial foreclosure sales.

“The purposes of this comprehensive scheme are threefold: (1) to provide the creditor/beneficiary with a quick, inexpensive and efficient remedy against a defaulting debtor/trustor; (2) to protect the debtor/trustor from wrongful loss of the property; and (3) to ensure that a properly conducted sale is final between the parties and conclusive as to a bona fide purchaser.” (*Biancalana v. T.D. Service Co.* (2013) 56 Cal.4th 807, 813-814 (*Biancalana*)). A properly conducted nonjudicial foreclosure sale is a final adjudication of the rights of the creditor and debtor. (*Id.* at p. 814.)

The nonjudicial foreclosure sale is generally complete upon acceptance of a bid by the trustee. (*Angell v. Superior Court* (1999) 73 Cal.App.4th 691, 700.) However, the presumption that the sale has been conducted regularly and properly, a presumption that is conclusive as to a bona fide purchaser, does not arise until a trustee’s deed is delivered. (*Biancalana, supra*, 56 Cal.4th at p. 814.)

JKB concedes that the reimbursement agreement became part of the security for the deeds of trust. Further, JKB does not contest the propriety of the foreclosure sale. Rather, JKB argues that, under California Uniform Commercial Code section 9604, the transfer of the reimbursement agreement had to be accomplished by trustee’s deed.

JKB relies on the following language in California Uniform Commercial Code section 9604, subdivision (a)(1)(B):

“... The secured party shall not be deemed to have elected irrevocably to proceed as to both real property and personal property or fixtures as provided in this subparagraph with respect to any particular property, unless and until that particular property actually has been disposed of pursuant to a unified sale (judicial or nonjudicial) conducted in accordance with the procedures applicable to real property, and then only as to the property so sold.”

According to JKB, this section requires that title to personal property be transferred by a deed and therefore the bill of sale was inadequate.

JKB has misconstrued this language. The requirement that the unified sale be conducted in accordance with the procedures applicable to real property does not dictate the transfer instrument. Rather, the logical interpretation of this section is merely that the sale itself proceed in the same manner as it would for real property, i.e., proper notice of default, notice of sale, and timely sale.

Moreover, JKB's construction would contravene the traditional and established forms of conveyance. A deed is used to convey or transfer title to real property whereas a bill of sale is a means to convey title to goods or chattels. (*Estate of Stephens* (2002) 28 Cal.4th 665, 671-672; *Hull v. Ray* (1926) 80 Cal.App. 284, 289.)

Finally, the trustee's sale is deemed final upon the acceptance of the last and highest bid and the recording of a trustee's deed perfects the sale. (Civ. Code, § 2924h, subd. (c).) Where, as here, there are no defects in the foreclosure procedure itself, delivery of a trustee's deed following the sale is "merely a ministerial act." (*Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 441.)

In sum, the trustee's sale was complete upon acceptance of the bid and the bill of sale transferred JKB's interest in the reimbursement agreement. Since JKB no longer had an interest in the reimbursement agreement, the trial court properly entered judgment in favor of the City on JKB's breach of contract action. In light of this conclusion, we need not decide whether Guaranty Bank and/or Beck Development acted in good faith for purposes of California Uniform Commercial Code section 9617.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondent.

LEVY, Acting P.J.

WE CONCUR:

DETJEN, J.

FRANSON, J.